

## Q&A: How can businesses improve survival chances?



John McLaughlin

A large percentage of family businesses fail within the second or third generation ' But certain actions can be to implemented boost a Family business's chances for survival. These actions and other issues related to success on planning are outlined here by John McLaughlin, a partner at Boston-based Berluti & McLaughlin LLC, a firm specializing in the areas of business and employment law, civil litigation, real estate and estate planning.

Q: Why is succession planning important for family businesses?

A: The main reason is to increase the business's chances for survival. Historically, only 70 percent of family businesses survive to the second generation and 30 percent to the third generation.

Q: Why do family businesses often fail in the second and third generation?

A: Most commonly, family businesses fail due to unresolved family conflicts, lack of leadership and training after the first generation and estate tax burdens.

Q: What are the primary goals of a business succession plan?

A: A well thought out plan preserves and increases the value of the business and the wealth of the owner and the owner's family Without a succession plan spelling out the owner's wishes, a family dispute can lead to litigation and financial hardship.

Q: Is there a golden rule regarding succession planning?

A: Both the business and family will survive and do well only if the family serves the business. Neither will do well if the business is run to serve the family. Family members working in the business must be at least as able and hardworking as any non-family employee.

Q: My business doesn't have a succession plan, so where do I start?

A: The process starts with the owner but should involve the entire family as well as the owner's attorney, accountant, insurance agent and other relevant consultants. Issues to consider:

- What are the growth plans for the business?
- Who in the family is capable of leading the business?
- What is the owner's exit strategy?
- How will the owner receive funds during retirement?
- What will the estate tax burden be upon the owners death?

Q: How can advance planning techniques be used to anticipate and avoid family conflict?

A: Techniques such as stock transfer restrictions, buy-sell agreements, multiple classes of stock and shareholder agreements can aid in the resolution of disputes without selling or dissolving the business.

Q: What is a stock transfer restriction?

A: It is a restriction placed upon the transfer of stock to prevent outsiders from acquiring ownership of stock. Stockholders (including heirs) must first offer to sell the stock to the company or to the other stockholder's).

Q: Why is it a good idea to consider multiple classes of stock ownership?

A: Having two classes of stock, such as voting and non-voting stock, can give owners flexibility in many situations. For example, family members active in the business could have stock with voting rights, while those not active could have non-voting stock. Non-voting stock can also be used to reward or retain key non-family employees without relinquishing control.

Q: Is it a good idea to have a buy-sell agreement?

A: A closely held family business should almost always have a solid buy-sell agreement reflecting the specific needs and goals of the owner and other family members. It is an important mechanism for maintaining control of the business while allowing for the compensation of another owner or family member upon death, disability, divorce or withdrawal from the business.

Q: What are the primary tax considerations when developing a succession plan?

A: You must know the business's worth and understand the transfer tax (estate tax). This way, you can coordinate your business and estate plans to provide for your family.